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Undue Spiritual Influence: an Historical Analysis

Introduction

In February 2017 it was reported that anonymous text messages had been sent to Muslim voters in the Stoke Parliamentary by-election urging them to vote Labour in order to defeat the UKIP candidate, and asking whether those who “helped the enemies of Islam” would “be able to answer for this in the Grave and on the Final Day?”¹ The *Guardian* stated that the message “suggested that recipients ‘could go to hell’” if they did not vote Labour and a UKIP blogsite, which attributed the text to a named Labour Party activist on the basis of an apparent misreading of an article in the *Sun*, alleged that the text amounted to spiritual influence and “grounds to annul the election”, citing the 2015 Luftur Rahman case in which it was asserted that the “Tower Hamlets First Party told voters they would go to hell if they didn’t vote for their man”.²

Then-mayor of Tower Hamlets Luftur Rahman had been found guilty in April 2015 of a number of variety of corrupt and illegal practices in connection with his re-election to that office in 2014.³ These practices included making false statements of fact about another candidate’s personal conduct or character, electoral bribery; and (by his agents) personation, postal vote fraud, fraudulent registration of voters, and the illegal payment of canvassers.⁴ They also included undue spiritual influence, a corrupt practice of which it appears that no-one had been found guilty in the previous 120 years or so (and in respect of which there had been only nine successful election challenges, all in Ireland between 1852 and 1893). The 2014 election was declared void; Rahman was removed from office, was ordered to pay £250 000 in interim costs and was barred from standing for elected office until 2021;⁵ he declared himself bankrupt in 2015.

Electoral Commissioner Mawrey’s decision resulted, albeit indirectly, in professional misconduct proceedings against Peter Herbert, chair of the Society of Black Lawyers and part-time employment and immigration judge and recorder in respect of allegations of racism he was reported to have made against the Election Commissioner at a rally in East

¹ *Guardian* 16 February 2017, “Stoke By-election: LibDems alert Police over Text Urging Muslims to Vote Labour”

² 16 February 2017 “Stoke Labour activist illegally exerting spiritual influence over Muslims” <http://www.bloggers4ukip.org.uk>, citing “STOKING HATRED Stoke Central’s Muslim voters warned they will go to hell if they do not vote Labour in anti-Ukip text” *The Sun* 15 February 2017.

³ *Erlam & Ors v Rahman & Anor* [2015] EWHC 1215 (QB).

⁴ Contrary to ss 106, 113, 60, 62A, 13D and 111 respectively of the Representation of the People Act 1983.

⁵ Costs were later assessed at £500 000.

London.⁶ In January 2017 a disciplinary panel ruled that Herbert should receive both an apology and “formal advice” after it found that he was guilty of misconduct, but that pressure should not have been applied to him “voluntarily” to refrain from sitting as a judge.⁷ The *Observer* reported that Herbert “said his treatment by the judiciary had made him feel ‘like a nigger’ and is appealing against the findings of the Judicial Conduct Investigation Office panel on the basis that it has racially discriminated against him”.

Herbert’s analysis of the 2015 election decision is far from universally accepted but it is noteworthy that Commissioner Mawrey, having referred to Irish Catholic voters in the nineteenth century as “men of simple faith, usually much less well educated than the clergy who were influencing them, and men whose natural instinct would be to obey the orders of their priests (even more their bishops)”,⁸ had gone on to state that “[t]his principle still holds good ... a distinction must be made between a sophisticated, highly educated and politically literate community and a community which is traditional, respectful of authority and, possibly, not fully integrated with the other communities living in the same area.” The analogy apparently drawn between priest-ridden nineteenth century Catholic ‘peasants’ and the Muslim inhabitants of twenty-first century London is highly problematic, and Giles Fraser protested in the *Guardian* that Mawrey had applied the prohibition on undue spiritual influence “to a contemporary religious minority that is suffering from a very similar brew of racism and hostility to what is seen as their foreign religious practices”.⁹

“Undue spiritual influence” is defined by s115(2)(a) of the Representation of the People Act 1983 as occurring where a person:

“directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting...”

In the Stoke by-election coverage both the *Guardian* and the *Sun* were quick to infer threats of hell from a text message which made no explicit reference to the concept, instead

⁶ *Guardian* 14 March 2016, “Judge sues Ministry of Justice for race discrimination”, “Lord Chief Justice intervenes in judge’s race discrimination claim against MoJ”, <http://www.bdbf.co.uk/lord-chief-justice-intervenes-judge-race-discrimination-claim-moj/#WSvUbTQM6DIo793w.99>.

⁷ *The Observer* 8 January 2017. See <http://www.obv.org.uk/news-blogs/ministry-justice-v-judge-d-peter-herbert> for an account of the pressure placed on Herbert.

⁸ Categorized by Fraser as the “trope of the ‘thick Irish’”.

⁹ 29 April 2015.

reminding the faithful of the (presumably uncontroversial) proposition that they would be held to account by their maker for the exercise of their vote. The same could be said of the *Rahman* decision, the “undue spiritual influence” there consisting of a number of remarks made by Mr Hoque, Chairman of the Council of Mosques, at a public meeting and at a wedding, and a letter published in a dual language English and Bengali newspaper, the *Weekly Desh*, which had been signed by 101 imams and other religious figures.

The remarks by Mr Hoque included exhortations to vote for Mr Rahman, claims that he had furthered racial and religious equality and would continue to support religious freedom and that he was the subject of dirty tricks, and assertions that Muslims had “been treated as second class citizens”. The *Weekly Desh* letter, which was found by Commissioner Mawrey to indicate “that it was the religious duty of Muslims to support the Claimant”, had stated that “everyone has a freedom of right to choose a candidate who is suitable and able to provide the services”; had complained of “media propaganda” and other activities which had divided the community in Tower Hamlets, and of the targeting of Muslims and Mosques; had claimed that the Borough had made “significant and enviable improvements in the areas of housing, education, community cohesion, inter-faith harmony, road safety and youth developments”; and had suggested that it was important to “retain this success and make further progress [by electing] someone ... who is able to lead these improvements and who will not discriminate on the basis of language, colour and religious identities. The authors of the letter had further stated that “[w]e believe that it is not an offence to be a Muslim voter, an imam or Khatib of a mosque and have involvement with all these”, and that it was:

“[u]nder no circumstances ... acceptable to give a voter less value or to criticise them on the basis of their identity, that “[a]s voters, like in any other elections we also have a right to vote in the forthcoming Tower Hamlets Mayoral Election and we should have the opportunity to cast our votes without fear”, and that “[a]s a cognisant group of the community and responsible voters and for the sake of truth, justice, dignity and development we express our unlimited support for Mayor Lutfur Rahman and strongly call upon you, the residents of Tower Hamlets, to shun all the propagandas and slanders and unite against the falsehood and injustice”.

Giles Fraser claimed in the *Guardian* that s115 of the 1983 Act was an “extraordinary and highly politicised piece of law” whose original predecessor was designed to curtail the power of the Catholic clergy to influence the voting decisions of electors who from 1872 had been able to cast their votes in secret rather than under the scrutiny of their landlords. Quoting Benjamin Disraeli’s view of the Irish as a “wild, reckless, indolent, uncertain and

superstitious race” whose “ideal of human felicity is an alternation of clannish broils and coarse idolatry” and whose “history describes an unbroken circle of bigotry and blood,”¹⁰ Fraser claimed that the provision “originated in a nasty atmosphere of racist hostility towards Irish Catholicism, that it was used to suppress the power of the Roman clergy who were feared because they did not behave as tame establishment Anglicans”¹¹ and that was intended “specifically to constrain the influence of the Roman Catholic clergy on what the English establishment took to be the ignorant and impressionable minds of the Irish proletariat”.

Fraser questioned whether, even if the Tower Hamlets religious leaders had used hellfire and damnation to bully voters (which he did not accept), this should be prohibited by law.

“if I think voting for an out-and-out racist party would be a sin (and I do), and that sins have eternal consequences (and I do), then I don’t see why I shouldn’t be able to say such a thing in a free society. And from the pulpit too... come to think of it, what about Anglican bishops in the House of Lords? Surely that’s the most egregious example of undue spiritual influence. Yet, of course, it’s the imams and those they support who suffer the consequences of the law. I wonder why.”

Fraser raises interesting questions about whether spiritual intimidation should be an election offence. The purpose of this paper is, however, to consider the Irish cases to which he refers, and the others in which the predecessor provisions of s115 were applied, in part in order to consider whether the offence is properly characterised, as he suggests, as a measure predicated on racist assumptions about what might be referred to as the “idiot Irish” in the nineteenth century. As to whether the Election Commissioner’s decision was correct, in January 2016 the Divisional Court granted partial permission in respect of Rahman’s challenge to it by way of judicial review, though the case does not appear to have proceeded to a full hearing at the time of writing.¹²

The Offence of Undue Spiritual Influence and its Historical Underpinnings

Section 115 of the 1983 Act replaced section 101 of the Representation of the People Act 1949, which was in materially identical terms, and which itself replaced the materially identical section 2 of the Corrupt and Illegal Practices Prevention Act 1883. That provision’s predecessor was section 5 of the Corrupt Practices Act 1854¹³ which was cast

¹⁰ Robert Blake *Disraeli* (Faber & Faber, 1966), 152–53.

¹¹ 29 April 2015.

¹² [2016] EWHC 1280 (Admin). This is probably because success on the ground in respect of which permission was granted would not make any difference to the ban.

¹³ The Act to consolidate and amend the Laws relating to bribery, treating and undue influence at elections of Members of Parliament 1854, which applied to Ireland as to Great Britain.

in similar terms to the current provision except that the words “temporal or spiritual” did not appear,¹⁴ the offence also prohibiting “in any other manner practis[ing] intimidation upon or against any person”. And even prior to the 1854 Act “[t]he exercise of undue influence in elections has been always held contrary to the common law”.¹⁵

Lord John Russell, who introduced the 1854 Act, had been exercised predominantly by material blandishments visited upon impecunious electors.¹⁶ At the time (and until the Ballot Act 1872) votes’ preferences were stated publicly in front of such other voters and non-electors who were present in the polling station. Small wonder that pressure from employers and landlords could be exerted and votes purchased for money or other benefits. Historian JT Whyte stated in 1960 that “[a]t the beginning of the nineteenth century the results of elections in Ireland were almost entirely dictated by the landowning class”, tenants being obliged to vote in accordance with their landlords’ preferences.¹⁷ In a letter written in 1824 to Home Secretary Robert Peel, an MP¹⁸ was referred to as the member of the Duke of Devonshire (that is, the MP whose seat was in the gift of the Duke by reason of his influence on his tenants),¹⁹ the writer stating that “if the duke as heretofore lets his tenants by private mutual understanding give their second votes for”²⁰ the candidate favoured by the writer, the latter “will succeed, otherwise from the present state of the registry, he will be beat”.²¹ More generally, according to a recent *History of the Parliamentary Franchise*, “Parliamentary seats were often considered as property and remained in the control of a family from one generation to the next” until the start of the twentieth century,

¹⁴ This despite the urgings of William Miles MP, who had chaired the Clare Election Committee of 1853 (see further below), referring to his experience of “such intimidations [which] had disgraced the Sligo and Clare elections [and] must never again disgrace the representation” and “trust[ing] that [the Bill’s sponsor] would take particular care in the wording of this clause so as to meet the case of spiritual intimidation: HC Deb 10 February 1854 vol 130 cc412-43.

¹⁵ V Conybeare, *Parliamentary Elections Corrupt and Illegal Practices Prevention Acts 1854-1883* (London, Waterlow Bros & Layton) 1884, 44-45, citing *Bradford* 1 O&H 40.

¹⁶ HC Deb 10 February 1854 vol 130 cc412-43.

¹⁷ JT Whyte, “The Influence of the Catholic Clergy on Elections in Nineteenth Century Ireland” (1960) *The English Historical Review* 239-259, 239.

¹⁸ Richard Power, one of two MPs for Waterford: see text to notes 25-28 below.

¹⁹ Cited in See DR Fisher (ed), *The History of Parliament: the House of Commons 1820-1832*, <http://www.historyofparliamentonline.org/volume/1820-1832/constituencies/co-waterford>.

²⁰ Emphasis added. The MP in question was Beresford – see text to notes 25-29 below.

²¹ In the event the Duke had refused to become involved in the dispute with which the writer was concerned, explaining “that he would give his ‘undivided support to’ [‘his’ member], in whose support he expected his own tenants to ‘vote singly’, and leave the contest to ‘the free choice’ of the remaining electors”.

only 1/3 of Parliamentary elections being contested across the British Isles in 1831, 58% in 1835 and 1859 and 49% in 1841.²²

Catholic Emancipation

The history of the offence of undue spiritual influence demonstrates its inextricable connections with the growth and exercise of Catholic suffrage in nineteenth century Ireland, which is outlined below. Penal proscriptions on Catholicism had begun to be dismantled at the end of the eighteenth century, and Irish Catholics were permitted to own land by a series of measures between 1774 and 1782 and were granted the franchise and admission to most civil offices by the Relief Act of 1793. The property threshold for Irish voters was set at forty shillings at this time, by contrast with the ten pound threshold in England, but progress on Catholic emancipation had stalled after the Act of Union 1801, which united Great Britain and Ireland. Catholics were not entitled to sit as MPs in Westminster, or to attend universities.²³ Daniel O’Connell had started to campaign for full emancipation in 1811, and in 1823 set up the Catholic Association which also campaigned for electoral reform, tenants’ rights and economic development. From 1824, membership dues of one penny per month (“the Catholic Rent”) attracted hundreds of thousands of peasants as well as middle class Catholics, and were used to create a fighting fund designed to finance the election campaigns of pro-emancipation MPs, as well as training priests. The Catholic clergy had not, as a rule, been politicised at the start of the nineteenth century,²⁴ but this had changed with a move to the education of Irish priests in Ireland and the prominence as a political issue of Catholic emancipation.

In 1824 a campaign to unseat Anglo-Irish Conservative Waterford MP Lord George Beresford was initiated by the Catholic Association which supported Henry Villiers Stuart, a young pro-Catholic from an Anglo-Irish land-owning family.²⁵ Priests arranged for their

²² House of Commons Library Research Paper 13/14 March 2013, pp 1-3 citing DR Fisher, *The House of Commons, 1820-1832*, History of Parliament Trust, 2009, Vol I, p233; FWS Craig, *British Parliamentary Election Results 1885-1918*, 1974, pp584, 588 and 624.

²³ This by reason of the Oath of Supremacy which was introduced in its original version by Henry VIII in 1534 “essentially as a political weapon against Roman Catholics”: see A Walker & E Wood, *The Parliamentary Oath* (House of Commons research paper 00/17, 2000), 16. After the restoration MPs and Peers were required to swear oaths of supremacy and of allegiance, the Parliament Act 1678 (“An Act for the more effectual preserving the King’s Person and Government, by disabling Papists from sitting in either House of Parliament”) adding a requirement to make a declaration against transubstantiation: see M MacDonagh, *Parliament: Its Romance, Its Comedy, Its Pathos* (Westminster, PS King & Sons, 1902), Chapter 8.

²⁴ According to Whyte fn 17 above, the “dominant political traditional in the Irish Catholic Church [being] one of non-resistance, inherited from the France of the *ancient régime* where most of the clergy had been trained”.

²⁵ See Fisher, fn 19 above.

parishioners to be canvassed, facilitated anti-Beresford campaigning at Sunday services, and accompanied and supervised electors on polling day.²⁶ Beresford, whose family had held the seat for 70 years,²⁷ represented a constituency which numbered 41 Catholics to every Protestant, but had “openly avow[ed] on the hustings, election after election, his undisguised hostility” to Catholic emancipation,²⁸ and had treated with “utter contempt” Stuart’s offer not to contest the seat if Beresford changed his position on this matter.²⁹

Local landowners did issue threats but O’Connell reported in a letter to his wife in June 1826 that the tenants were holding firm, reassuring her that the “clergy of the town most zealously assisted us...”³⁰ In May 1825, the Catholic Association had supplied local parish priests with funds to enable them to “‘advance cash or make some recompenses’ to voters ‘for opposing their landlords’”.³¹ Lord Duncannon, a leading Liberal, commented at the time that the Waterford election had been:

“a very great triumph for the Catholics, and has been conducted much to their credit with the most perfect order and regularity. You may hear a different opinion, but I have been on the spot from the beginning, and you may be assured such has been the fact. I think, however, that it has opened a new view of the state of Ireland as connected with the Catholic question, and not a very pleasing one to those who have property here, if that question is not speedily set to rest. The priests have tried their strength and succeeded against the landlords ... Beresford has put out a foolish address in which he talks of petitioning ... in consequence of the interference of the Catholic clergy, but he should recollect that the Protestant clergy have been setting them the example for years.”³²

The tactics used by the Catholic Association in Waterford in 1826 were later successfully deployed in Westmeath, Monaghan and Louth. In Westmeath a petition alleging, *inter alia*, kidnap of voters by mobs, threats of excommunication, and the participation of voters who did not meet the property threshold failed,³³ but “open war against the insurgents followed” with mass evictions of tenants many of whom were then (by reason of accrued debts to landlords) vulnerable to imprisonment.³⁴ Catholic Association funds were, as in Waterford, used to support these tenants and others who were boycotting absentee

²⁶ See T Wyse, *Historical Sketch of the Late Catholic Association of Ireland* (1829: London, Henry Colburn), 264 ff.

²⁷ See Fisher, fn 19 above.

²⁸ Wyse, fn 26 above.

²⁹ Letter to Sir Robert Peel cited in Fisher, *ibid*.

³⁰ Cited in Fisher, fn 19 above.

³¹ T Kirwan, cited in Fisher, fn 19 above.

³² Cited in Fisher, fn 19 above.

³³ Wyse, fn 26 above, 290-1. See also Fisher, <http://www.historyofparliamentonline.org/volume/1820-1832/constituencies/co-westmeath>.

³⁴ Wyse, fn 26 above, 293-4.

landlords.

Similar methods were again used at a by-election in Clare in 1828 and Daniel O’Connell was returned as MP.³⁵ His election resulted in the grant of full Catholic emancipation by the British Government,³⁶ though on the same day as the Emancipation Act 1829 received Royal Assent most small landowners in Ireland were disenfranchised by an Act raising the economic threshold for voters from 40 shillings to ten pounds.³⁷ Catholic emancipation triggered a withdrawal of the clergy from the electoral arena; a pastoral letter of 1830 from the Bishops of Ireland “rejoiced at the results” of the joint effort of clergy and laity “in seeking to obtain their just rights”, and stated that the bishops:

“found [them]selves discharged from a duty which necessity alone had applied to our ministry ... [and] which we have gladly relinquished, in the fervent hope that by us or by our successors it may not be resumed”.³⁸

In 1834 the bishops of Ireland prohibited the use of churches for political purposes and forbade clergy to mention political matters in the pulpit and to associate with political clubs.³⁹ It appears that these restrictions were largely followed in the general elections of 1832-1841,⁴⁰ but the growth of the movement for repeal of the Union in the 1840s pitched the clergy back into politics with two of the four Irish Catholic archbishops and 14 of the 23 bishops having joined the Repeal Association by 1844. By 1852 the political influence of the clergy had, according to JT Whyte, “reached its peak”.⁴¹

The Struggle for Repeal and the growth of election petitions

In 1852-53 no fewer than 29 Irish Parliamentary elections were subject to challenge.⁴² Most of the petitions were withdrawn and challenges in Athlone, Cork, Mayo, New Ross, Newry and Waterford County failed, though the Select Committee which heard the Mayo petition remarked that there appeared to have been “a great deal of spiritual influence on the part

³⁵ Whyte, fn 17 above, 241.

³⁶ The Emancipation [Roman Catholic Relief] Act of 1829 admitted Catholics to Parliament and to almost all public offices, though universities were not opened to Catholics until the implementation of the Universities Tests Act of 1871.

³⁷ The Parliamentary Elections (Ireland) Act 1829 applied to county seats and reduced the electorate from about 215 000 to under 40 000. In Borough seats, which had a mixture of corporate, property and freeman electorates (freemen not having to be resident, and freeman status being given by special favour) there were very few Catholics: see *The History of the Parliamentary Franchise* (House of Commons Library Research Paper 13/14 March 2013) p.16.

³⁸ Cited in Whyte, fn 17 above, 242.

³⁹ Whyte, fn 17 above.

⁴⁰ Whyte, fn 17 above 242-3.

⁴¹ Whyte, fn 17 above, 244.

⁴² Election Petitions: Return 28 August 1857 (Paper no 343 Parliamentary Session 1857). 61 elections to Parliament were challenged across Scotland, England and Ireland.

of a great body of the Roman-catholic priesthood during the election”.⁴³ At this time, and until 1883, there was no express legislative prohibition on the use of such influence (nor, indeed, any such prohibition on undue influence generally⁴⁴). But in 1853 the challenge to the election of two MPs in Clare succeeded on the basis that such influence had been exercised. The contest had been between Liberals Cornelius O’Brien and Sir John Fitzgerald and the “violently Tory” Colonel Vandeleur⁴⁵ who, knowing that some of “his” voters would be dissuaded from casting their votes for him (as instructed by their landlords⁴⁶), had sought a military escort for them, but complained that they had been “met by a local catholic priest, Rev. Mr Burke, who confronted them with a whip and yelled at the military guard”, and that they had thereafter been subject to further abuse and physical attack by a mob led by another priest, which had gathered around the polling station.⁴⁷ The ensuing violence had resulted in shots being fired by the military guard with seven people being killed and a further six injured.

William Miles MP, Tory MP for Somerset, reported the decision of the Select Committee appointed to inquire into the Clare petition to the House of Commons,⁴⁸ stating that the Committee had concluded that “a system of intimidation” had been organised which resulted in riots at least one of which had deterred voters from exercising their franchise but that “there does not appear to have been any general undue interference on the part of the Roman Catholic Clergy” at the election and that the MPs returned did not appear to have “in any way encourage[d] or [been] cognizant of the riotous proceedings.”⁴⁹ The last of these findings meant that Fitzgerald and O’Brien were permitted to stand again and Vandeleur was again defeated.⁵⁰ Immediately after the 1853 Clare election petition the Catholic hierarchy “promulgated stricter rules to govern the participation of the clergy in

⁴³ *Ibid.*, 15.

⁴⁴ See the discussion at HC Deb 10 February 1854 vol 130 cc412-43 for the law as it was then: “An Act which passed in the 49th year of Geo. III. inflicts various high penalties on persons who endeavour by improper means to procure a seat in Parliament, and who offer any gift or promise, any reward or office, to persons who assist in procuring such seat. The pecuniary penalties involved are very high—1,000l. for one offence, and 500l. for another, that of receiving any office so given”.

⁴⁵ KT Hoppen, *Elections, Politics, and Society in Ireland 1832-1885* (Oxford, 1984) p459

⁴⁶ That is, the tenants of the Marquis of Conyngham and Col. Wyndham who were reported to have been threatened with eviction if they did not vote for Vandeleur: D Haugh, “Massacre at Sixmilebridge 1852” in *The Other Clare*, (Shannon, 2011) Vol. 35

⁴⁷ J Keogh, The changing ruling class in Sixmilebridge and the impact they left on the community, 1650-1900, http://www.clarelibrary.ie/eolas/coclare/history/changing_ruling_classes_sixmilebridge/election_massacre.htm.

⁴⁸ HC Deb 09 June 1853 vol 127 cc1297-9. Not until 1868 were election petitions determined by judges.

⁴⁹ *Ibid* and see <https://archive.org/details/op1247272-1001> for the report of the Select Committee.

⁵⁰ “The character of the elections that have been going on”, *Spectator* 2 July 1853, <http://archive.spectator.co.uk/article/2nd-july-1853/1/the-character-of-the-elections-that-have-been-goin>

politics”.⁵¹ Among these rules was the prohibition on clergy disagreeing in the presence of the laity, which had the perverse result of excluding lay people from meetings in which candidates were selected.⁵²

Also avoided in 1853 was the Sligo election of Charles Towneley, partly because “the influence of the Roman-catholic priests was exercised in a manner inconsistent with their duty as Ministers of Religion, and destructive of freedom of choice on the part of voters”.⁵³ Several priests had “addressed the people from the window of [Towneley’s] lodgings” and had raised excitement among voters, a “large number” of whom were “thus prevented from voting for” his opponent.”⁵⁴

The “undue influence” of priests in Sligo appears to have been deduced from the alleged discrepancy between those who had promised to vote for Mr Towneley’s opponent and those who cast such votes, as well as by the rather unlikely accounts of the unsuccessful candidate and one other witness that priests had physically dragged no fewer than two thirds of voters to the poll (“[one] on each side of [each]”), which evidence was unsupported by that of other witnesses.⁵⁵ The witness evidence as to what was said by priests indicated that they were critical from the altar of the unsuccessful candidate’s vote in Parliament “to bastardize the Roman-Catholic children”, and that they accused him of having “sold his country and his religion”, also that they had encouraged voters to exercise their ballot for Mr Towneley,⁵⁶ and the evidence of the petitioner was that priests had stated that he was a traitor to his religion and that “any man who supported me voted for hell and the devil; and that every man who voted for my opponent ... voted for God and for Heaven”.⁵⁷ It is not clear from the report of the Committee how much of this evidence was accepted.

JT Whyte suggested in 1960s that priests were less often guilty of physical violence (as alleged in the Clare and Sligo cases) than of the “abuse of ... spiritual authority” with “[r]ecalitrant voters [being] insulted by name from the altar on Sundays, or driven from the chapels” and priests “refus[ing] to accept the customary Christmas or Easter offering

⁵¹ *Ibid*, 246.

⁵² Whyte, fn 17 above, 249-250.

⁵³ <https://archive.org/stream/op1247281-1001>.

⁵⁴ <https://archive.org/details/op1247282-1001> - see questions 2026-2035 at p.67 of the evidence for the remarkable leniency exercised by the committee to the leading questions put to the unsuccessful candidate.

⁵⁵ *Ibid* p.13 of the report and see questions 2011-15 and 2022 at p.65 of the evidence. See also p.18ff of the evidence (questions 397-413).

⁵⁶ *Ibid* p.57-60.

⁵⁷ *Ibid* questions 266-97, pp.12-13 of the evidence.

from them or engaging in “violent harangues from the pulpit, in which those who opposed the clerical candidate were threatened with exclusion from the sacraments or even with eternal punishment”. He referred to the Sligo petition in support of each of these examples of what might be called spiritual intimidation or abuse, though the Select Committee report on that petition did not uphold these complaints.⁵⁸ The commonplace nature of election petitions during this period was mentioned above, and petitions frequently succeeded for reasons distinct from any alleged clerical wrongdoing: there had been successful petitions in Limerick in 1820 and Wexford in 1830, for example, because “closed corporations” had operated to exclude eligible individuals from being recognized as voters; in Galway in 1827 because of organized rioting, in Dublin in 1831 because of (economic) undue influence, in Longford in 1837 because electors had been registered who did not meet the economic threshold, and in Kinsale in 1848 by reason of bribery. Widespread bribery had also tainted the election in Belfast in 1842, while unsuccessful petitions had been issued (also by way of example) in Athlone in 1827; Carrickfergus in 1831; Derry in 1833; Newry in 1833; Carlow in 1837 and Cork in 1838 and 1842 (when Daniel O’Connell won the seat).

In 1854-57 56 Parliamentary elections were challenged, 12 of them in Ireland. Most petitions were withdrawn and that brought in Sligo in 1856 failed as did those in Drogheda and Dublin City in 1857 elections, though in Drogheda the Select Committee heard evidence that the Catholic clergy had “harangued the people ... and created much excitement, making the election a question of religion” and claimed that a vote for the ultimately unsuccessful candidate was a vote for their God, though other witnesses testified that the priests’ comments had mainly concerned the avoidance of bribery “and that people were even warned against any act of violence”.⁵⁹ 1857 Parliamentary elections in Galway and Sligo were declared void for bribery and for voting irregularities respectively and in the same year the election of George Henry Moore in Mayo was voided for undue influence and spiritual intimidation.⁶⁰

It was clear that priests in Mayo had taken an active role in electioneering and there was a disputed allegation that one had stated from the altar that “the curse of God would follow every man that voted for” the unsuccessful candidate, as well as threatening physical violence.⁶¹ Another was alleged to have read aloud from the altar a list of voters’ names,

⁵⁸ *Ibid* 245-246. Cf https://archive.org/stream/op1247282-1001_pp_57-60.

⁵⁹ https://archive.org/details/op1248119-1001_pp.268-269.

⁶⁰ https://archive.org/stream/op1248122-1001_p.528_summary_of_evidence_528.

⁶¹ *Ibid*, 484-485.

“commenting strongly” on those expected to vote for the unsuccessful candidate; stating that “If the devil came up here, he would vote for him in preference...” and suggesting that he would not go to the house of “a traitor”,⁶² and on another occasion to have spoken “from the altar in strong denunciation” of those who would support the unsuccessful candidate, at whose supporters he was accused on one occasion of having shaken his hand.⁶³ There appears little doubt that some of the priests discussed in the Select Committee’s report on the Mayo election had been guilty of intimidation and physical violence,⁶⁴ but the evidence of spiritual abuse as such appears rather thinner.⁶⁵ With the exception of the reported threat relating to “the curse of God”, it is not clear that any of the statements found to have been issued by the priests in this electoral disputes involved specifically religious threats or promises. Having said this, the legislative provision which was in issue did not make reference to spiritual intimidation as such, being cast rather in terms of “practis[ing] intimidation upon or against any person” otherwise than by “mak[ing] use of or threaten[ing] to make use of any force, violence or restraint, or inflict[ing] or threaten[ing] to inflict, by himself or by any other person, any injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting...”

The Select Committee in the Mayo case appeared to take a different view to voting instructions issued by clergy and those issued by landowners, a point not lost on Archbishop McHale of Tuam who had issued a pastoral letter prior to the election emphasising the need for a spirit of peace and forgiveness and the avoidance of riot, intoxication and bribery,⁶⁶ and who told the Committee that he would not hesitate to punish any priest who acted violently or otherwise as alleged in the petition, but who also stated that it was “not only his right, but his duty, to express his opinion on the relative merit of candidates for the representation of the people in Parliament”; that any “coercion” by priests served only to counter that exercised by the gentry; and that:

“in the exercise of the elective franchise the Catholic peasantry should in the first instance be guided by the dictates of their conscience, but that, in the case of doubt,

⁶² *Ibid*, 532.

⁶³ *Ibid*.

⁶⁴ See also pp.504-505 *ibid*.

⁶⁵ There is a note that one witness was advised by an unknown person that if he did not vote for the priests’ preferred candidate his soul would go to her: *ibid*, 539.

⁶⁶ *Ibid*, 529.

they cannot do better than consult their clergymen and act upon their advice [though t]he clergy should by no means coerce the electors”.⁶⁷

Following Mayo no finding of spiritual intimidation or clerical misbehaviour voided an election until 1969. Whyte suggests that priestly influence had begun to wane by the 1860s, not least with the rise of the Fenian movement which the church opposed.⁶⁸ In the following years, power over the selection of candidates passed from the clergy to the Land League, then the National League, the National Federation and the United Irish League in succession; though the clergy were involved in these organisations, home rule candidates were typically not dependent on the clergy for election.⁶⁹ Whyte suggests that among the reasons for the declining power of the clergy were a significant increase in the number of polling stations, which allowed voters to vote independently, and the increasing education achievements of Catholics: “The clergy had first entered politics in order to rescue the people from the control of a territorial aristocracy: now a new phase of Irish politics was opening, and the ordinary people were beginning to be capable of running their politics for themselves”.⁷⁰

The absence of findings of clerical wrongdoing in this period was not the result of any shortage of election challenges; in the period 1857-67 32 elections were challenged in Ireland (133 across the British Isles). Most challenges were withdrawn but Limerick City’s 1858 election was declared void as were those in Clare and Roscommon in 1860 and Lisburn in 1863. Subsequent challenges to the outcomes of the by-elections in Limerick in 1859 and in Clare in 1860 failed as did challenges to elections in 1860 in Derry, in 1865 in Galway Town and King’s County and in 1867 in Tipperary County and Waterford.⁷¹ A Royal Commission in 1870 found that bribery had been widespread in the Dublin elections in 1857, 1859, 1865 and 1868.⁷² (That Commission also remarked that Catholics, though not barred by law from voting after 1793, were not numbered among the Freemen of Dublin until 1835 and were so “inconsiderable [in number] as scarcely to affect, in any appreciable degree”, the strongly Protestant, Conservative political character of the

⁶⁷ https://archive.org/stream/op1248122-1001/p.528_summary_of_evidence.

⁶⁸ *Ibid*, 253.

⁶⁹ *Ibid*, 253-4.

⁷⁰ *Ibid*, 255.

⁷¹ Election Petitions: Return dated 18 August 1859 (Paper 220 Parliamentary Session 2 of 1859), Election Petitions: Return dated 9 February 1864 (Paper no 85 Parliamentary Session 1864), Election Petitions: Return dated 30 July 1866 (Paper no 496 Parliamentary Session 1866), Election Petitions: Return dated 25 July 1967 (Paper no 583 Parliamentary Session 1867).

⁷² <https://archive.org/details/op1249655-1001>.

Freemen.”) Also in 1870 a Select Committee concluded that bribery had taken place at elections in Sligo Borough in 1860 and 1865, when a Conservative MP was returned.⁷³

The Sligo Select Committee also concluded that the election in 1868 had been tainted by undue spiritual influence exercised by the Catholic Bishop who made a statement during mass the Sunday before the election which, although the detail was disputed, amounted in the view of the Committee to “a strong declaration of ecclesiastical censure against those Roman Catholics who should vote against the Roman Catholic [Liberal] candidate – a censure which the Bishop admitted ... implied a withholding of rites of the Church until a proper reparation had been made”.⁷⁴ And in 1869, the responsibility for the determination of election petition having passed to the judiciary, Keogh J declared that the return of Benjamin Whitworth as MP for Drogheda was void by reason of intimidation, including intimidation by Catholic priests.⁷⁵

The Drogheda election petition had alleged undue spiritual influence, complaining (as well as about the use of serious violence) that one Catholic priest had urged voters to support Whitlock (a Home Rule candidate) if they favoured liberty and equality and opposed the Protestant ascendancy, and to have stated that any Catholic who opposed him would be a supporter of the Protestant Church and an enemy to his country, his religion and to the priests of the Church. He was also reported to have warned of a Protestant mob intending to arrive in the town and to have said that Catholics who did not oppose Orangemen “must be put down ... crushed at any risk”. Another priest was found to have spoken of the destruction wrought on Catholics by Cromwell and said that the Orangemen planning to come to Drogheda were the descendants of Cromwell’s soldiers, and should be opposed. Keogh J’s decision in that case was, however, based on ordinary intimidation, rather than spiritual influence, no findings having been made by him of inappropriate spiritual pressure having been applied to voters. (Whitworth’s election was voided and his son was returned unopposed.)

An 1869 report of a Select Committee on Parliamentary and Municipal Elections found that election corruption was commonplace in England and Ireland, though not in

⁷³ *Ibid.* The report of the Commission and of a similar one on Cashel in 1869 resulted in the Sligo and Cashel Disenfranchisement Act 1870 which disenfranchised the boroughs from 1 August 1870

⁷⁴ *Ibid.* The report of the Commission and of a similar one on Cashel in 1869 resulted in the Sligo and Cashel Disenfranchisement Act 1870 which disenfranchised the boroughs from 1 August 1870

⁷⁵ <https://archive.org/details/op1249566-1001>. See especially pp. iv, 18 & 19.

Scotland.⁷⁶ The report referred to intimidation by landlords, opposed in Ireland by “the equally powerful influence of the Roman Catholic clergy”, with “[o]rganized mobs ... an almost generally recognised part of the system of conducting an Irish election” such that the deployment of troops was commonplace, while being almost unheard of in England or Scotland.⁷⁷ The Committee quoted from the conclusion of Keogh J in the Drogheda case that “the influence which is first exercised, and which provokes, if it does not justify, the counter influences set in motion, is that of landlords and their agents”, reporting the views of the Committee that “there exists in many boroughs and counties of Ireland no such thing as freedom of election, and they consider that some change is urgently needed”.⁷⁸

Given the concern expressed by the Select Committee in 1869 about the absence of free elections in Ireland it is important to emphasise that, while the Drogheda decision was one of 11 in election petitions in Ireland in January to May 1869,⁷⁹ no other petition that year alleged spiritual undue influence. The Dublin election of Sir Arthur Edward Guinness and the Cashel election were voided for bribery⁸⁰ and that in Youghal for treating,⁸¹ and challenges in Belfast, Limerick, Sligo and Derry based on alleged bribery failed as did one in Carrickfergus based on alleged intimidation and treating.⁸² None of these cases involved complaints of spiritual undue influence and, as mentioned above, the Drogheda election was avoided for ordinary intimidation, rather than spiritual influence. Keogh J had rejected allegations of intimidation and undue spiritual influence in his decision on the petition rising from the election in 1868 of Lord St Lawrence as MP for Galway Town.⁸³ Having praised the generally orderly way in which the election had been conducted (no injuries sustained by anyone except one sprained little finger, and not a single pane of glass broken), the judge cited his own decision in Drogheda and that of Sir Samuel Romilly in *Huguenin & Baseley* to the effect that undue influence would inevitably void an election,⁸⁴ and to draw the line between “due and undue influence:

⁷⁶ Paper no 352:1 of Parliamentary Session 1868-9, 23 July 1869.

⁷⁷ *Ibid.*, xviii.

⁷⁸ *Ibid.* Secret balloting was introduced in 1872 as the Committee had recommended.

⁷⁹ There were 48 decisions in challenges across the British Isles and a large number of additional petitions were withdrawn: Election Petitions: Return dated 12 March 1869 (Paper no 120-I Parliamentary Session 1869).

⁸⁰ *Ibid.*, pp.235, 379 371 and see <https://archive.org/details/op1250919-1001>.

⁸¹ *Ibid.*, 401.

⁸² *Ibid.*, pp 217, 248, 379-80, 259, 226.

⁸³ Election Petitions: Further return dated 12 March 1869, pp.332 (Paper no 120-I Parliamentary Session 1869).

⁸⁴ *Ibid.*, 344.

“... ‘Undue influence’ will be used if ecclesiastics make use of their power to excite superstitious fears or pious hopes, to inspire, as the object may be best promoted, despair or confidence ... to alarm the conscience by the horrors of eternal misery, or support the drooping spirits by unfolding the prospect of eternal happiness...”⁸⁵

Keogh J rejected any suggestion that the clergy had to remain aloof from politics, suggesting that “To be a good citizen there must be a religious sentiment; and if you release the people from the influences, I say the legitimate influences, of their clergy, you will set them at sea upon the billows of every kind of infidelity; and they will become as indifferent to the civil as they have been to the religious authority”. The question, he said, was whether influence which had been brought to bear was undue, which in his view was no more difficult to determine in the case of “ecclesiastical than of civil influence”.⁸⁶ He also stated that he would have avoided the election if a single example of a cleric having refused the rites of the Church in order to influence or punish “the most miserable voter that crawls about this town”, but he found none, and criticised those bringing the petition for making this allegation which there was “not one particle of evidence to prove ... not a suspicion of it”.⁸⁷ Nor did he accept that any intimidation had occurred, or that there was any evidence of “religious influences [being] brought to bear to arouse the superstitious fears or the pious hopes of the voters of this borough”, or that they were “alarmed by the horrors of eternal misery, or that their drooping spirits were upheld by the prospects of eternal happiness, promised to them by their bishops or their priests”.⁸⁸ He could not approve of the fact that “the most sacred mystery [of mass was] ... suspended to deliver a political discourse” or of “the devout minds, whose hopes and expectations are bent upon the celebration of that sacred rite, being diverted or confused by the brawl of an election battle”.⁸⁹ But he recognised the right of clergy to address their congregation:

“to advise them to canvass the merits of candidates; to tell them that one man is for the country, and that another man is against the country; and to tell them that this man is in favour of a church establishment which they think is more for the benefit of the people to have disestablished... I would not hold a very hard and fast line as to language which, in excited times, might be used by Roman Catholic

⁸⁵ *Ibid*, 345.

⁸⁶ *Ibid*, 345.

⁸⁷ *Ibid*, 347-8. He was not convinced that if it had been proven to his satisfaction (which it was not) that a priest had stated that anyone who supported the opposition “would be a traitor to his God and to his country, and that he would deserve to have the brand of Cain upon him as a fugitive and a vagabond ... ‘to whom the earth when tilled should not yield up its fruits’ [and] whose iniquity was ... ‘greater than that it might deserve pardon’”, this would be sufficient to avoid the election, though he found that “it would be a transaction and a language which no man could attempt to justify”: 350.

⁸⁸ *Ibid*, 349.

⁸⁹ *Ibid*.

ecclesiastics or by civilians. They may be impatient; they may be zealous; they may be wrathful, provided they do not surpass the bounds of what is known as legitimate influence. I heard nothing, as reported ... which at all surpassed these bounds. There was no threat to suspend or refuse the rites of the church; there was no play upon the superstitious feelings of the people”.

Clerical resistance to revolutionary politics

Caroline Morris records that there was a steep fall off in election petitions after 1869, when jurisdiction was transferred from Parliament to the judiciary.⁹⁰ In 1870, however, an election petition from Longford resulted in what is perhaps the most considered reflection on the parameters of undue spiritual influence, in which FitzGerald J declared that the election victory of Reginald Greville-Nugent over John Martin was void by reason of unlawful treating by the successful candidate’s agents, and that one priest was guilty of undue influence, though he did not find that the latter affected the election result.⁹¹

The petition had alleged undue spiritual influence and intimidation in florid terms, complaining that members of the clergy had “met together and resolved on nominating ... Greville-Nugent ... and on carrying his election, and on putting down all opposition to the nominee of the Roman Catholic clergy”; that they had denounced Martin’s supporters and made public and private “threats of ruin, both in this world and in a future state, directed against all who would support [him]”; and that “means were employed to coerce all Roman Catholic priests in the ... county to act together”.⁹² It was also said that the priests had spent moneys provided by Greville-Nugent on hiring mobs to intimidate supporters of his opponent. FitzGerald J did not accept that there was anything unlawful about clerical involvement in the selection of Greville-Nugent as a candidate “however objectionable it may have been”. It was, he said:

“quite open to the clergy as electors of this county, as it would have been to any other body of people in the county, to separate themselves from the general mass of electors, to meet, select a candidate, and agree to support [him, though t]he objections to it are that it separates the clergy from the laity; exposes the former to the imputation of what is called ‘clerical dictation’; it creates jealousy and uneasiness, and lays the foundation for the charge of undue influence ... and calls upon the Judge who may have to determine the validity of the election to view with

⁹⁰ *Parliamentary Elections, Representation and the Law* (Oxford: Hart, 2012).

⁹¹ *County of Longford* (1870) 2 O’M & H 6, House of Common Paper 178 of Session 1870.

⁹² *Ibid.*, vi.

suspicion, and criticize with vigilance the course which the clergy may take in the contest”.⁹³

The judge went on to state that Martin had benefitted from a similar selection by “a clique in Dublin [involving] dictation “more objectionable” than that alleged against Longford’s Catholic clergy.”⁹⁴ (This was a reference to the fact that Martin was allegedly supported by “newspaper editors” and “Fenians”: the forefathers of the IRA who had staged an unsuccessful rising some three years previously and were committed to the redistribution of property from the “aristocratic locusts” to the people.”⁹⁵) FitzGerald J found it unremarkable that the clergy had taken a role in an election which they regarded “rightly or wrongly ... as a contest between the advocates of law and peace and order ... and a band of intruders and promoters of disorder and revolution”, stating that this was a case in which the clergy would be expected “to put forward their whole power; and I would not be inclined to weigh with too nice scales, the mode in which their influence was exercised”.⁹⁶ He was highly critical of the violent activities of Martin’s supporters but emphasised that “[t]he Catholic priest has, and he ought to have, great influence” by reason of “his position, his sacred character, his superior education, and the identity of his interests with his flock ... and that influence receives tenfold force from the conviction of his people that it is generally exercised for his benefit and that priests might properly “counsel, advise, recommend, entreat, and point out the true line of moral duty and explain why one candidate should be preferred to another, and may, if he think fit, throw the whole weight of his character into the scale”. The line was to be drawn, however, at any:

“appeal to the fears, or terrors, or superstition of those he addresses. He must not hold hopes of reward here or hereafter, and he must not use threats of temporal injury, or of disadvantage, or of punishment hereafter. He must not, for instance, threaten to excommunicate, or to withhold the sacraments, or to expose the party to any other religious disability, or denounce the voting for any particular candidate as a sin, or as an offence involving punishment here or hereafter. If he does so with a view to influence a voter, or to affect an election, the law considers him guilty of undue influence. As priestly influence is so great, we must regard its exercise with extreme jealousy, and seek, by the utmost vigilance, to keep it within due and proper bounds”.

FitzGerald J dismissed a number of allegations made by the petitioner, including claims of threatened excommunication and refusals to hear confessions, and found that others,

⁹³ *Ibid*, viii-ix.

⁹⁴ *Ibid*, x.

⁹⁵ J. Lee, *The Modernisation of Irish Society 1848-1918* (Dublin, Gill & Macmillan, 2008), 56.

⁹⁶ Fn 91 above, xi.

including that a priest had used improper language “calculated to excite to violence”, did not establish undue influence. He did find, however, that one priest had denounced Martin from the altar as a “Fenian”, had said that he would not give Fenians mass and prayed that they would rot in hell, and had struck one of Martin’s supporters. The judge concluded that this was tantamount to declaring that Martin’s supporters would receive divine punishment as Fenians,⁹⁷ though taking into account the circumstances he did not accept that the election was influenced by the priest’s behavior, or that the priest had acted as the agent of Greville-Nugent.

FitzGerald J’s decision in the *Longford* case involved an anxious scrutiny of the matters alleged and a careful attempt on his part to characterise as spiritual intimidation only those instances in which a cleric had clearly strayed beyond setting out for voters his view that there was a moral duty to support one or oppose another candidate, to suggesting that voting decisions would be punished by the Church or by God. For the most part, it appears that the nature of the influence which the Catholic clergy sought to exercise in Ireland in the nineteenth century was not of this sort, but consisted more in an appeal – even a robust demand - for Catholic solidarity in the face of discriminatory laws and the previously unchecked exercise of power by wealthy landlords.

There were 8 challenges to Irish elections in 1871-72 of 15 across the British Isles. Four of the Irish challenges resulted in elections being declared void (Waterford, Longford, Mallow and Galway, with challenges in Tipperary and to the other Waterford MP failing).⁹⁸ Undue spiritual influence was alleged unsuccessfully in Mallow, Waterford and Tipperary, though the Mallow election was avoided for treating.⁹⁹ In the Tipperary case Mr Baron Hughes was at pains to stress that clergy, like landlords, could exercise due influence over voters, but had “no privilege to violate or abuse the law”, further that “[n]ot every act of a priest is a ‘spiritual act.’ An assault by a priest is simply an assault, and not ‘priestly intimidation,’ and ... ought ... to be ... prosecuted, and punished, like that of any other individual”.¹⁰⁰ In Waterford the election was voided for bribery¹⁰¹ while a challenge to another election in the same Borough which was based partly on alleged clerical

⁹⁷ *Ibid*, xxi.

⁹⁸ Election Petitions: Return dated 6 June 1872 (Paper no 268 Parliamentary Session 1872).

⁹⁹ *Ibid*, 111. Morris J went out of his way (see 112) to insist that landlords, gentry and employers were entitled to exercise legitimate influence on voters.

¹⁰⁰ *Ibid*, 142.

¹⁰¹ *Ibid*, 149.

misconduct failed on the facts.¹⁰² But in 1872 the election of Captain John Philip Nolan as MP of Galway County case was declared void by reason of spiritual intimidation following a trial before Keogh J who ruled that “intimidation and undue influence ... did extensively prevail” at and prior to the election, and that a number of named priests:

“by threats and denunciations of temporal injury, and spiritual punishment, uttered before or immediately after Divine service, and from the altars of their respective places of worship, and otherwise... intimidated and unduly influenced great numbers of the Roman Catholic electors ... to vote for ... Nolan, or to refrain from voting against him. And further, it was proved that numbers of such electors who had promised to vote for the said William le Poer Trench afterwards had been compelled to vote for ... Nolan... or to refrain from voting for ... Trench, and had avowed they were so compelled by said intimidation and undue influence”.¹⁰³

The judge found that one priest had condemned those threatening violence against his opponents as “renegade Roman Catholics, who would be excoriated”, and that another had “denounced from the altar of his church, in the presence of his congregation on the Sabbath”, a Protestant elector,¹⁰⁴ and perjured himself during the trial. Among those guilty of undue influence contrary to the 1854 Act were the Catholic Archbishop of Tuam and the Catholic Bishops of Galway and Confert, though it was “not proved that [they had] ... sanctioned or had taken part in ... denunciations”, which he claimed it was accepted were “in direct violation of the ordinances of the ... Church”.¹⁰⁵ Further, “voters throughout the County were, on the day of polling, systematically conducted to the booths by the Roman Catholic clergy, who interfered actively in such polling, and were in so doing acting as the agents of the said John Philip Nolan,” and mob violence had occurred, some said to have been with the direct involvement of members of the clergy.

Keogh J’s decision in the *Galway County* case proved extremely controversial, not least because it resulted in a decision that the seat was won by Nolan’s opponent Captain Trench, who had gained 600 votes to Nolan’s 2800 (out of a total 5 000 votes cast).¹⁰⁶ The *Spectator* in July 1882 recorded its amazement at Keogh J’s “decision that the landlord influence was not most widely used on the side of Captain Trench”,¹⁰⁷ stating that “this

¹⁰² *Ibid*, 157.

¹⁰³ Minutes of the evidence taken at the trial of the Galway County Election Petition (1872) Part I: House of Commons paper 241-I of 1872, iii.

¹⁰⁴ One priest was reported to have said that anyone who did not vote for Captain Nolan “would be an emissary of the Devil” and “Any man that would vote for ... Trench would go down with the mark of Cain to their graves, and their children after them”.

¹⁰⁵ This was stated to be a misrepresentation by the judge at HC Deb 08 August 1872 vol 213 784.

¹⁰⁶ HC Deb 08 August 1872 vol 213 cc760-830.

¹⁰⁷ “The Galway Election Evidence” 20 July 1872 <http://archive.spectator.co.uk/article/20th-july-1872/6/the-galway-election-evidence>.

was not an election of a religious character in principle at all” but concerned the issue of landlord-tenant relations in the wake of Captain Nolan’s submission to arbitration, “Landlords, Catholic and Protestant, Liberal and Conservative” having overcome longstanding differences to “insist[] on a man who was understood to represent the protest against this revolutionary principle, Captain Trench.” The article went on to suggest a “universal” assumption among the Irish landlords, accepted by Keogh J:

“that [landlords] had a natural right to their tenants’ support, that it was not fair, indeed, to exercise this right too hardly, so as to inflict any cruel pressure on their consciences; but that they were entitled at least to the ‘compliment’ of their tenants’ abstaining from voting against their candidate, and that when this was not conceded, it was only fair and right that they (the landlords) should withdraw all personal signs of favour and good-will, and make their tenants feel what it was to lose a friend”.

It was, the *Spectator* stated, “admitted on all sides” that “the declarations of the landed proprietors exerted a great restraint over the inclinations of the tenants”. “And there is much more evidence that unwilling votes were given under such influence for Captain Trench, or that votes not given to him were lost to Captain Nolan, than that unwilling votes were given under sacerdotal influence to Captain Nolan”. There was:

“a regularly organised system of very moderate, but very steadily applied ‘undue influence’ against Captain Nolan, the impartial reader of the evidence could not, we should have thought, for a moment doubt. But then Mr. Justice Keogh thinks that ‘no steadier, no safer, no more legitimate influence’ than that of the landlord over his tenant could be used; and how far a judge holding that opinion could be impartial in the matter, we certainly have great difficulty in determining”.

Irish MP Sir John Gray denounced Keogh J in the House of Commons, complaining (according to Hansard) that the theory “that there existed in the county of Galway what he called a Prelatical conspiracy against the free choice, the franchises, and the consciences of the electors” which “was developed at the very opening of the Judgment—ran through it from beginning to end, and was most consistently and elaborately worked out for the purpose of establishing the several conclusions to which the Judge eventually arrived” was unsupported by any “particle of evidence ... nothing save the wicked imagination of the Judge himself”. Gray condemned Keogh J’s derisive reference to the Archbishop of Tuam as “the great Archbishop of the West”, pointed out that no conspiracy was alleged in the petition or by counsel, and suggesting that such existed only “in the prurient fancy of the Judge”, and complained of Keogh’s sarcastic language, use of satire and mimicry of one of the priests. Referring to the fact that Nolan had submitted a dispute between himself and

some of his tenants to arbitration, to the horror of fellow landlords, Gray stated that the clergy had merely sought to counter the pressure to vote against Nolan imposed by those landlords,¹⁰⁸ a number of whom had admitted to the election court that they punished tenants who voted for Nolan by demanding huge rental payments, as well as boycotting tradesmen who supported him.¹⁰⁹ According to Hansard, Gray:

“read [a] letter of Mr. Staunton, addressed to his tenants, threatening all kinds of evil—the raising of rent, the deprivation of bog, and other injuries, should they refuse to vote as ordered [and stated that] here was a case of direct coercion, on the face of which it was declared by the Judge that landlord intimidation did not exist. More direct even than that was Mr. Staunton’s own evidence... that one of the tenants purchased the goodwill of the holding some six or seven years before the election, continued to pay the same rent as his predecessor, and yet, because he would not vote according to his landlord’s dictation, the houses were unroofed over his cattle. That was sworn to; it was admitted by the landlord himself; and yet Mr. Justice Keogh came to the conclusion that there had been no intimidation on the part of the landlords, and that they had only exercised their legitimate rights by raising rents, depriving men of their means of living, levelling houses, and other such acts, to demonstrate that the votes were given by that Parliament not for the tenants’ own use, but for the aggrandizement of the lords of the soil”.¹¹⁰

The MP went on to protest that there had been no recommendations of prosecution in any of the many other election cases in which electoral offences had been found, this by contrast with Keogh J’s certification that 36 persons, including three Bishops, had been guilty of undue influence, and the decision of Ireland’s Attorney General to prosecute 23 or 24 of those named, including one of the three Bishops and some 20 priests.¹¹¹ Gray pointed out that the sitting MP found guilty of undue influence by Keogh J in the Drogheda case was not prosecuted, and that 11 persons found to have taken bribes in Dublin had equally escaped prosecution. Other MPs struck a similar tone to that of Sir John Gray though Sir Robert Peel gave the judge a stout defence.¹¹²

First to be prosecuted was the Bishop of Clonfert who was acquitted by a largely Catholic jury,¹¹³ to extraordinary scenes of jubilation.¹¹⁴ It was contemporaneously said that it “was pretty conclusively proved” that the Bishop had “never said anything so wicked” as that

¹⁰⁸ *Ibid* 777-778.

¹⁰⁹ *Ibid* 779-781

¹¹⁰ *Ibid* 781-782. See also the speech of Mr Synan MP at col 794 ff which details evidence before Keogh J of the boycotting of tradesmen and eviction of tenants by Lanlord supporters of Trench

¹¹¹ *Ibid* 782 and see HC Deb 23 July 1872 vol 212 cc1626-35.

¹¹² *Ibid* 785 ff.

¹¹³ HC Deb 23 July 1872 vol 212 cc1626-35. The jury’s composition was the result of Lord O’Hagan’s Act, which came into force in 1873 and which “lowered the qualification to such an extent that tenants came into the box where landlords used to be found”.

¹¹⁴ <http://places.galwaylibrary.ie/history/chapter41.html>

which was alleged against him: i.e., that “Anathema, anathema shall be hurled at any person who will not do as I recommend or as my clergymen direct”.¹¹⁵ Samuel J. Maguire, who as Galway County librarian in the 1940s and 50s published *The Galway Reader*, reported that Keogh’s “effigy was burned in broad daylight in Nassau Street, Dublin; in Tralee by 100 men of the Kerry Regiment of Militia; in Galway, Cork, Limerick, Waterford, Drogheda, Newry and Belfast” after the Galway judgment and that his reaction to the protests was “to go all ‘Orange’ at the Assizes, and his address to the Grand Jury of Derry on his last appearance in court would have done great credit to the Worshipful Master of any Orange Lodge”.¹¹⁶

In 1874 Lawson J declared another Galway election void. In this case both petitioner and respondent were Catholic, the latter having been supported by the Archbishop of Westminster on account of his support for Catholic education.¹¹⁷ The judge found that the action of a parish priest in denouncing one of the candidates, however unusual, did not amount to undue spiritual influence,¹¹⁸ and remarked on the “entire absence of altar denunciations, of threats and of curses”, which he suggested was the fruit of the Galway County case. He did find, however, that on polling day priests and the Bishop of Galway had led a “mob” which intimidated voters. This kind of intimidation was in the judge’s view worse than practised by employers or landlords whose threats to dismiss or to evict “are justifiable acts, if it were not for the effect they would produce upon the freedom of election” whereas “to riot and to beat people, and disturb the peace of the town, is worse. It is a crime in itself, and is committed for the purpose of producing an undue effect upon the election”. Lawson J found that the election had not been free, his only reference to spiritual influence being to a priest who was reported to have told voters to “Look to your conscience” or “Mind your conscience”, thereafter speaking in Irish, which the judge regarded as “cogent evidence of undue influence”,¹¹⁹ also to evidence that priests who had been present at an incidence of mob violence did not express disapproval of the cry “To hell with Keogh [J] and Joyce” (the petitioner).¹²⁰

Section 5 of the 1854 Act was repealed by the Corrupt and Illegal Practices Prevention Act 1883 which was motivated significantly by concerns about corruption of recently

¹¹⁵ *Ibid.*

¹¹⁶ <http://places.galwaylibrary.ie/history/chapter41.html>

¹¹⁷ <https://archive.org/stream/op1250132-1001> p.149.

¹¹⁸ <https://archive.org/stream/op1250132-1001> p.154.

¹¹⁹ *Ibid* 156

¹²⁰ *Ibid* 158

enfranchised (and relatively poor) voters both directly and in the form of increased electoral expenditure, Attorney General Sir Henry James expressing concern about the use of paid agents who “set an example of corruption and were the means of corrupting others”.¹²¹ Section 2, which prohibited the use of undue influence, made express reference for the first time to threats to inflict “spiritual injury”. Vansittart Conybeare stated that the amendments which had been introduced to the definition of the corrupt practice of undue influence were “designed to render the definition of the offence less vague [rather] than to alter the law on the subject”.¹²² Henry Hobhouse’s commentary on the Act advised readers that the *Longford* decision contained the best definition of “spiritual influence”, but suggested that the dicta of FitzGerald J in that case was “now apparently limited by the new definition, as a priest who threatened future punishment can hardly be said to ‘threaten to inflict by himself or any other person spiritual injury’ [though] ... a priest who threatens to withhold any sacrament or office of the church is clearly within the definition”.¹²³

The *Spectator* protested at the time that “spiritual intimidation alone, - spiritual intimidation not involving physical injury and loss” ought not to be penalised,¹²⁴ arguing that “no spiritual teacher is worth his salt who does not, on sufficient occasion, denounce sins which affect political life, just as much as sins affecting the moral and social life; and that no spiritual teacher who really believes that the consequence of sin is suffering, either in this world or in the next or in both, can properly abstain from pointing out this consequence to his congregation, and from pointing it out in any kind of language which is best fitted to bring it home to their hearts”. “[I]f that is admitted”, concluded the editorial, “the only difference between undue influence and due influence, is the difference between a conscientious exercise of this influence by spiritual persons, and an unconscientious exercise of it”. And if this was the case, how could a secular judge “perhaps of another faith and almost certainly of another phase of culture and political belief—sitting in judgment at the trial of an election petition, properly pronounce with any sort of authority” upon the matter?”

¹²¹ Fn 15 above pp.2-3.

¹²² *Ibid*, 45.

¹²³ H Hobhouse, *The Parliamentary Elections (Corrupt and Illegal Practices) Act 1883* (London, W Maxwell & Son) 1883, pp.15-17

¹²⁴ <http://archive.spectator.co.uk/article/23rd-june-1883/5/spiritual-intimidation>. Cf the approach some ten years later <http://archive.spectator.co.uk/article/10th-december-1892/5/the-south-meath-election-and-the-unionists>.

The magazine also criticized the decision of Lawson J in the 1874 *Galway* case which was “characterised by even Mr. C. Lewis, the Protestant and Conservative Member for the City of Londonderry, as unfair”, stating that clerics must be entitled to express a genuine belief that a particular act was sinful (and that Gladstone had admitted as much): “It is of the very essence of spiritual influence that it enters necessarily into all the duties of life, the political duties amongst the rest, and that the use of it must appear ‘undue’ to those who think that it is used for mischievous ends”. Excommunication, the *Spectator* pointed out, was a weapon almost never used in Ireland, and then only “for purposes plainly and conspicuously moral and spiritual. In our day, there is no case of ‘undue’ spiritual influence which could be determined to be so by Judges of a different faith and a different political creed, with any chance of commanding popular respect and adherence to their judgment”.¹²⁵

The final examples of elections voided for undue spiritual influence were those in North and South Meath in 1892, which arose from the split in the Irish Parliamentary Party (IPP) following the exposure of a lengthy adulterous affair between its leader Charles Stuart Parnell and Katherine O’Shea. Parnell was MP for Meath between 1875 and 1880 and for Cork City between 1880 and his death in 1891 (aged 45), and leader of the Home Rule League from 1880.¹²⁶ He had been largely responsible for the Liberal Party having adopted Home Rule as a central tenet, and was at the height of his powers when, in 1890, the affair was exposed. It caused a rift between the IPP and the Liberals, and his general condemnation by the Catholic Bishops who were shocked by his behavior and who lost trust in his ability to secure Home Rule. Archbishop Walsh declared against Parnell in the first “parting of the way” in Irish history between “the two dominant forces of Nationalism and Catholicism.”¹²⁷ Whyte suggests that the vigour with which the clergy approached the task of opposing Parnellism could “at least partly be ascribed to a feeling that this was their last chance to restore their now rapidly waning authority in political matters”.¹²⁸

¹²⁵ Clerical engagement in politics appears to have taken a very different shape in Quebec in the late nineteenth century: see Charles Lindsay, “The Ultramontane Movement in Canada” (1877) 125 *The North American Review* 557-575 and the decision of Canada’s Supreme Court in *Brassard v. Langevin* (1876-77) 1 S.C.R. 145, Yves Boisvert, “De religion, de politique et de croix”, *La Presse* 21 September 2013.

¹²⁶ Parnell held the balance of power in the hung Parliament of 1885 between William Gladstone’s Liberals and Lord Salisbury’s Conservatives.

¹²⁷ Emmet Larkin, “The Roman Catholic Hierarchy and the Fall of Parnell,” 44 *Victorian Studies* (1961) pp. 315-336.

¹²⁸ Fn 17 above, 257.

Parnell refused to step down from his leadership of the IPP after Gladstone made it clear that the Liberals would no longer work with him or towards Home Rule and the party split with the majority of the anti-Parnellites forming the Irish National Federation which was supported by the Catholic Church. Parnell died soon afterwards. There were rumours as early as December 1890 that Parnell's defeat in the North Kilkenny by-election would be subject to a petition, Bishop Brownrigg of Ossory having conceded in a letter to the Archbishop that there had been "one little spiritual threat" from the altar, but stating that he had otherwise kept his anti-Parnell clergy in line with express reference to the danger of an election petition by Parnell's supporters.¹²⁹ But shortly prior to the 1892 elections the Bishop of Meath wrote in a letter read from the pulpit across the County's churches that "Parnellism strikes at the root, and saps the very foundations of the Catholic faith", that it was "unlawful and unholy ... in distinct, direct, and essential antagonism with the principles of Christian morality, and even dangerous to their faith as Catholics" and that "no intelligent or well-informed man can continue and remain a Catholic so long as he elects to cling to Parnellism" which he referred to as a "great moral, social and religious evil."¹³⁰ The Bishop had, in addition, stated in a sermon that "Parnellism was nothing but a heresy, and that he would approach the death-bed of the heretic and the profligate with a greater confidence of his salvation than that of a Parnellite", also that "Parnellism was moral ruin, that it was improper and unholy, that Parnellites were losing the faith and becoming heretics".

The elections in both South and North Meath, in which Parnellites were defeated, were challenged. In the former there were allegations of bribery, treating and intimidation which were readily dismissed by the trial judges, O'Brien and Andrews JJ. While suggesting that it might be "necessary to consider at a future time whether the terms of the [1883 Act] themselves involve the revision in one respect of the rule which was laid down in the *Longford* case, by making injury, not benefit, punishment, not reward, that which is the subject of fear, not hope, alone undue influence", O'Brien J stated his view that "the object of the Statute was merely to bring spiritual means within the category of such influence"¹³¹ and that the approach set out in the *Longford* case remained the law: "that it is the undoubted right of the clergy to canvass and induce persons to vote in a particular way,

¹²⁹ Frank Callanan "Clerical Dictation?: Reflections on the Catholic Church and the Parnell Split" (1990) 45 *Archivium Hibernicum* 64-75, 65.

¹³⁰ *Southern Division of the County of Meath: Dalton v Fulham* (1892) 4 O'M & H 130, Converted Elections (Judgments) Paper 25 House of Commons Papers 1893, 25.

¹³¹ *Ibid*, 26.

but that it is not lawful to declare that it is a sin to vote in a different manner or to threaten or refuse the sacraments to a person for so doing”. The judge flagged, but did not seek to answer, the question whether it could properly be said that a voter had a moral obligation to vote for one or other candidate, and drew attention to the fact that the church had not only been largely responsible for the selection of the successful candidate but had taken a huge role in the election campaign, having become:

“converted for the time being into a vast political agency, a great moral machine, moving with the resistless influence of united action and a single way. Every priest who was examined was a canvasser, The canvass was everywhere, on the altar, in the vestry, on the roads, in the houses.... Of all the 10 polling places there was but one ... in which there was not a priest as agent and personation agent, with or without laymen... The presence of the priest, no doubt, would be a strong and moral influence, and a check upon traitors and cowards; but it was an influence undoubtedly attended with distinct danger to the freedom of the voter. Of the whole constituency there were not less than ... 900 illiterate voters, who had to declare themselves in the presence of the priest to whom so many of them were violently opposed”.

The judge went on to remark that a layman could be avoided after a ballot whereas a priest could not, and to make reference to the strong theme of the campaign that Parnellism was sinful. He referred to the public closing against them of the gates of a church which Parnell supporters wished to attend: “a public act of excommunication and terrorism”; to the statement of a priest from the altar that Parnellites committed sacrilege by taking communion and another by a priest who stated that he would not attend a voter on his deathbed or give him the sacraments because the latter had refused to vote as instructed;¹³² and to other acts of intimidation by priests, including the canvassing of votes in the confessional which, he suggested, might cause the penitent to think that absolution was dependent on the direction of his vote.¹³³ Not surprisingly, he concluded that clergy in South Meath “did use language calculated to convey to the minds of the voters ... that their conduct involved the question of eternal condemnation or the contrary”.¹³⁴

Andrews J also heard the North Meath case (with Johnson J), having refused the invitation of the respondent to declare his election void on the basis (based on the South Meath decision) that general intimidation and undue influence had prevailed across North Meath

¹³² *Ibid*, 28-29.

¹³³ *Ibid*, 34.

¹³⁴ *Ibid*, 35.

so as to render the election void at common law.¹³⁵ He found that there had been instances of personal violence by clergy “even against women, and some of which no provocation could justify”, and reiterated that the pastoral letter “amounted to undue spiritual influence of the most potent kind; and, as [its] expressed purpose ... was to induce electors to vote, at the impending election, in favour of one candidate and against the other, the election was avoided at common law by reason of the widespread generality of its influence, and under Statute law by reason of its amounting to undue influence” under section 2 of the 1883 Act:

“To what further length could undue spiritual influence go than for the Bishop to declare from the altar that Parnellism, which was the political faith of one of the two contending parties, was no better than heresy, and that he would approach the death bed of a profligate, or a drunkard, with greater confidence than he would that of a Parnellite; or for a priest to preach from the altar that to believe in Parnellism was to commit a mortal sin, and was to deft the Church, and expose to excommunication?”

The MP whose election was overturned by the North Meath petition protested in 1893 that the reaction of the “anti-Home-Rule press” to the decision were “eminently characteristic of the incurable prejudice and inexcusable ignorance of British Unionists upon Irish matters”, and that the stereotyped “oppressive despotism of the priests” which was the “keynote of these exultant attacks” was not only “in utter disregard of facts and political fair-play” but also “hypocritical” in view of the endemic treating which characterised English elections at the time but which was, he said, generally overlooked.¹³⁶ He further complained that Presbyterian ministers in Ulster had always taken a very active part in elections; that “a reverend Unionist declared to his congregation [in South Tyrone] that the choice in the (then) coming election was one between Christ and the Devil”; and that:

“Presbyterian ministers act in booths as personation agents in almost every election in Ulster. They stand near the ballot-box, and closely scrutinise the voters as they deposit their votes. Inside and outside the polling booths, they are the most watchful and most resourceful of Unionist workers, and yet we never hear a word

¹³⁵ *Northern Division of Meath case* (1892) 4 O’M & H 186, *Converted Elections (Judgments)* Paper 25 House of Commons Papers 1893, 39

¹³⁶ <https://www.marxists.org/archive/davitt/1893/01/priestinpole.html>. Some flavor of the standard approach to Irish voters which persisted well beyond this period might be gleaned from the remarks in 1900 of Baxter Borrett, in “Leaves from an English Solicitor’s Note Book” 12 *Green Bag* 307 (1900), that since the Ballot Act 1872 and the Corrupt Practices at Election Act “something very nearly approaching to absolute purity of election has been at last established throughout the length and breadth of the electoral districts of Great Britain” though “there is an impression in England that the most potent factor at Irish elections is the spiritual influence of the Roman Catholic priest over the votes of the ignorant and ill educated [which] no act of Parliament can reach.”

of protest urged against the exercise of clerical influence of this political complexion by the British anti-Home-Rule press.”

The unseated MP Michael Davitt (himself an Irish nationalist who had been imprisoned as a Fenian in 1870) accepted that Andrews J “had no alternative but to void the elections on the evidence”, though he stated his certainty that “neither pastoral nor spiritual pressure” made a difference to a single vote. He suggested that priests’ influence was the result of their identification with “the Irish people’s cause, social or national” and protested that there was “not in the whole of Ireland a voter, literate or illiterate, so obtuse as to believe he places his soul in any, the least possible, peril by voting contrary to the advice of bishop, pastoral, or priest”, pointing out that Catholic voters had defied the Catholic hierarchy in their droves and voted for the Parnellites in July 1892.

Davitt complained that the “Unionist outcry” was hypocritical, no attack ever having been made on priests who denounced Fenians or supported landlords and Tories, and that “The Irish priest is denounced because he is a Nationalist and an active foe to the landlord system” and that Lord Salisbury, who consistently argued that Home Rule “would hand over Ireland to Archbishop Walsh”, was opposed to the Archbishop not as a “Roman Catholic dignitary” but as “a Home Ruler and Radical land reformer”. The Irish Catholic Church had always been the “Church of the poor” and its priests the vindicators of the people’s causes against “the injustice and insolence of those who neither toil nor spin, but who have ground the faces of the labouring poor between the upper and nether millstones of landlordism and Castle rule”. And “[e]very chapter of modern Irish history is a refutation of the notion that Rome can dominate in Irish National or secular matters”, England ha[ving] more than once tried to exercise some political control over Irish prelates and priests, by means of those very Vatican interests which Unionists now allege to be the end and aim of the Catholic hierarchy in their support of Home Rule”.

Davitt’s analysis chimes with that of Whyte who suggested in 1960 that Irish voters were on occasion not only prepared to stick to their chosen candidate in the teeth of clerical opposition but even to alter their position simply in order to defy clerical pressure, and that “priests were under more constraint from electors than electors were from priests”, and could generally “lead their people only in the direction that they wanted to go.”¹³⁷ Nor

¹³⁷ *Ibid*, 247-8.

did they necessarily sing from a single hymn sheet, important distinctions often existing between old and young clergy.¹³⁸

The Twentieth Century and Beyond

The corrupt practices provisions of the 1883 Act were replaced in due course by the materially identical provisions of the 1983 legislation. There appear to have been no petitions – or at any rate no successful petitions – based on undue spiritual influence for the next 120 years, the only reference to the offence thrown up by a search of Parliamentary papers in these years consisting of allegations made in 1889 to a Select Committee on Parliamentary and Municipal Elections that such influence was exercised by dissenting ministers in Wales in the 1886 general last election. (The allegation was denied, witnesses making the point that Church of England clergy gave similar support to Conservative candidates.)¹³⁹

This is not to say that religious leaders did not become involved in election matters during this period. In Northern Ireland, politics has been organised along largely religious lines since the start, and it stretches credulity to assume that Ian Paisley, firebrand Protestant sectarian and eventual First Minister in a power-sharing government, refrained from turning his hellfire and brimstone oratory to the election-related decisions of his followers at least prior to his establishment in 1971 of the Democratic Unionist Party (at which stage such pressure would presumably have been superfluous). Paisley had been a minister since 1946 (aged 20), co-founded the Free Presbyterian Church of Ulster in 1951,¹⁴⁰ and was heavily involved in unionist politics from the mid 1950s. He was a leading opponent of the (predominantly Catholic) civil rights movement which in 1970 generated the moderate nationalist Social Democratic and Labour Party and over the years is reported to have been associated with no fewer than 18 paramilitary groups.¹⁴¹ In 1969, speaking at a loyalist rally after attacks on Catholic homes, he claimed that “Catholic homes caught fire because they were loaded with petrol bombs; Catholic churches were attacked and burned because they were arsenals and priests handed out sub-machine guns to parishioners”.¹⁴² In 1969 he said

¹³⁸ *Ibid*, 251-253. Whyte ascribed the conservative gains in the 1850s and victory in 1859 to clerical division rather than inaction, after which clerical influence began to wane.

¹³⁹ Appendices to the Report of the Royal Commission on Land in Wales and Monmouthshire (Cmnd paper 8242 of 1896).

¹⁴⁰ He led the church until 2008 when he also resigned as First Minister, and died in 2014.

¹⁴¹ Kim Grego, “*The Language of Conflict in Northern Ireland: Gerry Adams vs. Ian Paisley*” <http://riviste.unimi.it/index.php/AMonline/article/viewFile/515/717> (University of Milan Faculty of Letters and Philosophy, *Other Modernities*), 82.

¹⁴² “Ian Paisley: in quotes” BBC 12 September 2014, <http://www.bbc.co.uk/news/uk-northern-ireland-29171017>.

of Catholics that “They breed like rabbits and multiply like vermin”.¹⁴³ And in 1988 he was excluded from the European Parliament, where he held a seat, when he heckled then Pope John Paul II’s keynote address to Parliament with the words: “I denounce you, Antichrist! I refuse you as Christ’s enemy and Antichrist with all your false doctrine,” stating on the death of the Pope (who he described as “the scarlet woman of Rome”) that “This Romish man of sin is now in hell”.¹⁴⁴

An analysis of Paisley’s speeches at the annual conferences of the DUP between 1993 and 2004 indicated 40 uses of the word “God” (Sinn Féin’s Gerry Adams used the word once in his speeches to the party’s annual conferences only once during this period, and that was to say “God help us”).¹⁴⁵ It may be the case that Paisley restricted his clerical utterances to religious matters, and reserved electioneering for his political self. But where, as in his case, a cleric wears his collar wears even when donning a beret signifying membership of a militia group,¹⁴⁶ the boundaries appear very blurred.

Nor has religious intervention been limited to Northern Ireland. In 2008 Bishop Joseph Devine of Motherwell warned the-then PM Gordon Brown that he had lost the trust of Catholic voters over the Human Fertilisation and Embryology bill, the *Telegraph* reporting that Catholic church leaders had “encouraged voters to target the seats of MPs who rejected changes to the abortion law”.¹⁴⁷ In 2014 the Bishop of Portsmouth was reported as stating that MPs who had voted in favour of the same sex marriage legislation should be denied communion,¹⁴⁸ though the intervention did not come during an election campaign and was not explicitly directed at voters. And in 2016 the *Guardian* reported that the Northern Irish Catholic hierarchy “has urged people not to vote for candidates in favour of reforming abortion law in [May’s] devolved assembly election” (Northern Ireland alone in the UK permitting abortion only on very narrow grounds).¹⁴⁹ The newspaper

¹⁴³ “‘Never never never’ and other famous words from Reverend Ian Paisley” *thejournal.ie* 12 September 2004 <http://www.thejournal.ie/ian-paisley-quotes-1668331-Sep2014/>.

¹⁴⁴ Ibid and “Ian Paisley: in quotes”

¹⁴⁵ Kim Grego, “*The Language of Conflict in Northern Ireland: Gerry Adams vs. Ian Paisley*” <http://riviste.unimi.it/index.php/AMonline/article/viewFile/515/717>, 88

¹⁴⁶ The “Third Force” established by Paisley in 1981: see “Ian Paisley death: Third Force ‘were a motley crew of teens and farmers...’” *Belfast Telegraph* 13 September 2014. See also “Northern Ireland: Unleashing the Third Force” *Time* 7 December 1981.

¹⁴⁷ “Labour warned not to rely on Catholic support in Glasgow by-election after abortion vote” *Telegraph* 13 July 2008.

¹⁴⁸ “Bishop of Portsmouth: Catholic MPs who voted for equal marriage should be banned from communion” *Pink News* 21 March 2014

¹⁴⁹ “Catholic bishops back anti-abortion candidates in Northern Ireland vote” 28 April 2016.

reported that “The bishops praised local politicians who have been ‘opposing multiple attempts efforts to legalise the killing of unborn babies’.”

Concluding remarks

All of this serves to highlight the peculiarity of the offence of undue spiritual influence having been charged in the Tower Hamlets case, even more so of Lutfur Rahman having been found guilty of it. On no analysis did the evidence point to anyone having “appeal[ed] to the fears, or terrors, or superstition” of voters, to have “h[e]ld hopes of reward here or hereafter, [or] use[d] threats of temporal injury, or of disadvantage, or of punishment hereafter ... [or] threaten[ed] to excommunicate [or similar], or to ... expose the party to any other religious disability, or denounce the voting for any particular candidate as a sin, or as an offence involving punishment here or hereafter”. The assumption appears to have been too readily reached that Muslim voters in Tower Hamlets would be unduly influenced by religious leaders, and that the influence of any such leaders on voting was pernicious.

Is it the case, however, that this application of the prohibition on undue spiritual influence formed part of a continuum Giles Fraser claimed? Firstly, it is clear that the legislative precursors of s155 of the 1983 Act did not, contrary to Fraser’s assertions, spring from a racist hostility towards the wild Irish; undue influence was forbidden by common law in the exercise of the franchise as well as in private acts,¹⁵⁰ and its prohibition by statute (in 1854) did not at first expressly apply to spiritual influence and appears to have been directed primarily at the use of financial incentives to influence votes. The same is true of the 1883 Act which was, again, primarily motivated by concerns about financial corruption and, if anything, appeared to narrow the scope of undue spiritual influence as it had by that stage been prohibited by the judiciary.

Nor, secondly, could it fairly be said that the initial judicial interpretation of the 1854 legislation to cover clerical influence necessarily indicated a suspicion of the Catholic clergy as such: the Clare petition of 1853 succeeded because of physical intimidation (albeit that one of the offenders was a priest), the priesthood generally having been regarded as not having interfered unduly with voters.¹⁵¹ The Sligo petition of the same years did succeed because of alleged undue influence by priests, though it is unclear precisely what the Select Committee found to have happened.¹⁵² Certainly there were allegations of physical

¹⁵⁰ See *Dalton v Fulham* (1892) (the South Meath case) fn 131 above.

¹⁵¹ See text to fns 47-49 above.

¹⁵² See text to fns 55-57 above

intimidation by priests in this petition and in the successful petition four years later in Mayo,¹⁵³ though attention was drawn above to the marked contrast in approach of the Select Committee in the latter case to pressure imposed by priests, on the one hand, and landowners on the other. The same contrast in approach is evident in Lawson J's voiding of the 1874 Galway election in which he condemned the intimidation of voters by a mob said to have been led by priests and the Bishop of Galway while opining that employers and landlords were entitled to threaten to dismiss or evict, albeit not in order to affect the outcome of an election.¹⁵⁴

A number of elections were declared void by judges because of the activities of Catholic clerics. Noteworthy, however, is the fact that Keogh J, who was the subject of much apparently warranted criticism after his decision in the 1872 Galway County petition, had not only based his decision in the 1869 Drogheda petition on ordinary, rather than spiritual, intimidation by priests, but had drawn attention in his Drogheda decision to the influence exercised by landlords and their agents as a catalyst of, if not an excuse for, clerical interference.¹⁵⁵ He had also rejected claims of spiritual intimidation in the 1868 Galway Town challenge. Certainly the elements of that decision extracted above do not indicate any hostility towards or suspicion of Catholics or their priests, a matter not entirely surprising in view of the fact that Keogh himself was a prominent Catholic and former nationalist politician, albeit a scourge of the Fenians. The decision of FitzGerald in the Longford petition was notable for its recognition of a wide sphere of legitimate influence on the part of, and a complete absence of hostility to, Catholic clergy. And while the 1892 election results in South and North Meath were declared to be void by reason of clerical influence the facts as found in the former case were extreme inasmuch as they included the refusal of access to a church by Parnell's supporters, while in the latter case the MP whose election was avoided himself accepted that the outcome was inevitable on the evidence.¹⁵⁶ Further, and notably, the nature of the dispute between the Parnellites and the Catholic hierarchy in Meath, as with that between the Fenians and the hierarchy in Longford two decades before, was one along political rather than religious lines.

¹⁵³ See text to fns 61-65 above

¹⁵⁴ See text to fns 118-121 above

¹⁵⁵ See text to fn 78 above. See also the decision in the unsuccessful Tipperary petition discussed in the text to fn 101 above.

¹⁵⁶ See text to fns 134-138 above.

If one was searching for a unifying factor in the outcome of the election petitions considered here it might more convincingly be found in concern for the protection of the established order against perceived threats than in suspicion of “other” religions and their adherents. The Catholic hierarchy in Ireland shifted its allegiance over time between more or less radical politics but regularly sought to provide a counterweight to the pressures exerted by anti-nationalist landlords, and it appears to have been in this context that clergy were prone to allegations of election misconduct. This does not obviously provide an explanation for the outcome in the Lutfur Rahman case, which might indeed be justifiably regarded as one in which there was a rush to judgment of religious influences whose apparent impropriety appears to have owed much to the “otherness” of those involved than to the content of the communications.

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